

INDIANA PUBLIC DEFENDER COMMISSION MINUTES

September 4, 2002

At 3:08 p.m., Chairman Lefstein determined that a quorum was present and called the meeting to order. Present were Commission members Susan Carpenter, Judge Daniel Donahue, Representative Ralph Foley, Bettye Lou Jerrel and Rebecca McClure. Senator Richard Bray joined the meeting soon after it started. Also, present were Gael Depert, from the Public Defender Council, and Tom Carusillo.

1. Minutes from the May 29, 2002 meeting were reviewed and approved.
2. Staff reported that he would be leaving as attorney for the Commission and taking on other duties in the Division of State Court Administration. The meeting with the JTAC and Computer Associates regarding the statewide case management system was also discussed.
3. Chairman Lefstein discussed the process for selecting a new staff attorney and indicated he would be speaking to Lilia Judson about the details. Members Susan Carpenter and Bettye Lou Jerrel volunteered to serve on a committee participating in the interview process.
4. Chairman Lefstein also discussed attendance at Commission meetings by members and noted that he may contact those not regularly attending to review their situation.
5. Next, Chairman Lefstein reported on the American Bar Association's effort to revise guidelines in death penalty cases. The proposed revisions would put more subjective analysis into the qualification of attorneys to handle death penalty cases. Chairman Lefstein suggested that the Commission may want to revisit Criminal Rule 24 and make recommendations for changes to the Supreme Court.
6. A brief discussion was then had regarding the annual report. A draft was circulated.
7. The next Commission meeting is scheduled for December 11, 2002 at 3:00 p.m. in Room 1071, South Tower, National City Center, 115 West Washington Street, Indianapolis, Indiana.
8. The Commission approved reimbursements in capital cases as follows:

COUNTY	DEFENDANT		TOTAL
Greene	Leone		\$341.25
Knox	Whipps		\$4,244.40
Lake	Britt		\$5,140.25
	Richeson		\$8,563.35
Marion	Shannon		\$15,825.60
Spencer	Ward		\$14,413.22
TOTAL			\$48,528.07

9. The Commission approved reimbursements in non-capital cases as follows:

COUNTY	PERIOD COVERED	TOTAL EXPENSE	ADJUS'T	ADJUS'D EXPEND.	40% REIMB.
ADAMS	04/01/02-06/30/02	\$25,242.49	\$0.00	\$25,242.49	\$10,097.00
BENTON	05/15/02-08/07/02	\$9,878.42	\$480.00	\$9,398.42	\$3,759.37
BLACKFORD	05/01/02-07/31/02	\$9,219.50	\$809.92	\$8,409.58	\$3,363.83
CARROLL	04/01/02-06/30/02	\$24,329.27	\$0.00	\$24,329.27	\$9,731.71
CLARK	04/01/02-06/30/02	\$75,107.98	\$2,853.57	\$72,254.41	\$28,901.76
DECATUR	04/01/02-06/30/02	\$41,099.88	\$18,494.95	\$22,604.93	\$9,041.97
FAYETTE	04/01/02-06/25/02	\$68,364.69	\$0.00	\$68,364.69	\$27,345.88
FAYETTE	09/01/01-07/23/02	\$20,972.75	\$10,224.20	\$10,748.55	\$4,299.42
FLOYD	04/01/02-06/30/02	\$105,276.33	\$0.00	\$105,276.33	\$42,110.53
FOUNTAIN	04/01/02-06/30/02	\$17,741.97	\$3,725.81	\$14,016.16	\$5,606.46
FULTON	04/01/02-06/30/02	\$26,473.96	\$2,928.58	\$23,545.38	\$9,418.15
GREENE	04/01/02-06/30/02	\$46,241.42	\$540.00	\$45,701.42	\$18,280.57
HANCOCK	04/01/02-06/30/02	\$89,311.64	\$0.00	\$89,311.64	\$35,724.66
HENRY	04/01/02-06/30/02	\$92,918.87	\$0.00	\$92,918.87	\$37,167.55
JASPER	SEQ			\$0.00	\$0.00
JAY	05/01/01-03/31/02	\$133,203.01	\$104,284.12	\$28,918.89	\$11,567.56
JENNINGS	04/01/02-06/30/02	\$17,879.95	\$130.00	\$17,749.95	\$7,099.98
KNOX	04/01/02-06/30/02	\$61,117.75	\$0.00	\$61,117.75	\$24,447.10
KOSCIUSKO	04/01/02-06/30/02	\$48,083.13	\$0.00	\$48,083.13	\$19,233.25
LAKE	04/01/02-06/30/02	\$570,487.20	\$1,140.97	\$569,346.23	\$227,738.49
LAPORTE	04/01/02-06/30/02	\$88,902.22	\$0.00	\$88,902.22	\$35,560.89
MADISON	04/01/02-06/30/02	\$348,553.88	\$0.00	\$348,553.88	\$139,421.55
MARION	04/01/02-06/30/02	\$1,286,225.83	\$0.00	\$1,286,225.83	\$514,490.33
MIAMI	04/01/02-06/30/02	\$72,382.93	\$0.08	\$72,382.85	\$28,953.14
MONROE	04/01/02-06/02/02	\$159,886.00	\$0.00	\$159,886.00	\$63,954.40
MONTGOMERY	04/01/02-06/30/02	\$26,454.75	\$0.00	\$26,454.75	\$10,581.90
NOBLE	04/01/02-06/30/02	\$40,470.67	\$0.00	\$40,470.67	\$16,188.27
OHIO	04/01/02-06/30/02	\$8,532.36	\$0.00	\$8,532.36	\$3,412.94
ORANGE*	04/01/02-06/30/02	\$42,401.21	\$0.00	\$42,401.21	\$16,960.48
PARKE	04/01/02-06/30/02	\$12,034.33	\$0.00	\$12,034.33	\$4,813.73
PERRY	06/03/02-08/05/02	\$15,309.23	\$0.00	\$15,309.23	\$6,123.69
PIKE	04/01/02-06/30/02	\$36,347.67	\$10,374.34	\$25,973.33	\$10,389.33
PULASKI	04/01/02-06/30/02	\$26,362.73	\$9,687.22	\$16,675.51	\$6,670.20
RUSH	04/01/02-06/30/02	\$22,433.47	\$5,912.12	\$16,521.35	\$6,608.54
SCOTT	05/07/02-08/12/02	\$44,636.40	\$13,837.28	\$30,799.12	\$12,319.65
SHELBY	05/01/02-07/31/02	\$51,266.90	\$0.00	\$51,266.90	\$20,506.76
SPENCER	05/09/02-07/22/02	\$5,180.60	\$0.00	\$5,180.60	\$2,072.24
STEUBEN	04/01/02-06/30/02	\$53,882.64	\$11,854.18	\$42,028.46	\$16,811.38
SULLIVAN	04/14/02-07/19/02	\$13,180.34	\$0.00	\$13,180.34	\$5,272.14
SWITZERLAND	04/01/02-06/30/02	\$18,478.54	\$9,266.27	\$9,212.27	\$3,684.91
VANDERBURGH	04/01/02-06/30/02	\$369,024.60	\$0.00	\$369,024.60	\$147,609.84

VERMILLION	04/01/02-06/30/02	\$17,668.34	\$0.00	\$17,668.34	\$7,067.34
VIGO	04/01/02-06/30/02	\$256,125.58	\$43,545.94	\$212,579.64	\$85,031.86
WASHINGTON	04/01/02-06/30/02	\$38,311.00	\$11,493.30	\$26,817.70	\$10,727.08
WHITE	04/01/02-07/31/02	\$9,759.28	\$0.00	\$9,759.28	\$3,903.71
WHITLEY	04/01/02-06/30/02	\$30,489.44	\$7,081.24	\$23,408.20	\$9,363.28
TOTAL		\$4,577,251.15	\$268,664.09	\$4,308,587.06	\$1,723,434.82

Judge Donahue abstained from consideration of the claim from Clark County. The claims from Fayette and Jay Counties were rejected to the extent they included claims prior to January 1, 2002. Since the rejected claims would have been subject to proration if they had been timely filed, the Commission felt the claim deadlines should be enforced as to claims prior to January 1, 2002. All counties will be reminded of the filing deadlines and of the possibility that late claims will be rejected. A discussion was also had regarding noncompliance in class D felony courts in Marion County. This situation will continue to be monitored.

10. The Commission then reviewed its standing policy of not counting judicial experience toward qualification of counsel to handle cases under the Commission's standards. The Commission determined to table the matter, with Judge Donahue volunteering to draft a proposed resolution.
11. Next, the Commission considered a request for guidance from Miami County concerning the public defender board hiring a former judge who had appointed two members to the board, and potential conflicts arising from the former judge appearing before a former colleague. While the Commission was troubled by the hiring of a former judge who appointed members to the public defender board, the Commission did not feel it was in a position to make a decision on the matter. It was noted that this presented issues of ethics for which the Commission could not issue a binding decision. It was suggested that perhaps the Indiana State Bar Association, the Supreme Court Disciplinary Commission or the Judicial Qualifications Commission might be better situated to provide guidance.
12. The Commission next reviewed a request to use experience as stand-by counsel to qualify for handling cases under the Commission's standards. The Commission concluded that such service should not be counted towards satisfying Commission standards.
13. The Commission then considered whether Marion County complied with Commission standards for purposes of authorizing a salaried capital public defender. The Commission concluded that for purposes of reimbursement of a salaried capital public defender, Marion County is sufficiently in compliance with its comprehensive plan. The Executive Director of State Court Administration will be notified of the Commission's determination.
14. The next matter taken up involved a guideline for counties phasing-in compliance. It was generally felt that a guideline was needed. The Commission then approved

the following guideline:

A. For purposes of authorizing reimbursement pursuant to I.C. 33-9-14-5, “compliance with the guidelines and standards set by the commission” shall be considered by the Commission to include counties that have submitted a comprehensive plan approved by the Commission and that are, at the time of the requested reimbursement, substantially in compliance with:

1. all Commission guidelines and standards, or,
2. the terms of a phase-in plan and all Commission guidelines and standards applicable to the terms of the phase-in plan.

Counties that qualify for reimbursement pursuant to subsection (2) above shall only be eligible for reimbursement of those indigent defense services provided under the terms of the phase-in plan. No reimbursement will be approved for those indigent defense services that are not substantially in compliance with the terms of the phase-in plan.

B. For purposes of the this guideline, “phase-in plan” means a comprehensive plan that proposes compliance with Commission guidelines and standards over a period of time rather than full compliance as of the time the comprehensive plan is approved. The “phase-in plan” shall specifically describe and designate:

1. those indigent defense services or courts that will be phased-in, and,
2. the time frame in which the phase-in of specific indigent defense services or courts will be achieved, including intermediate steps toward achieving compliance.

The period of time for the phase-in of indigent defense services or courts will be established by the Commission in consultation with the applying County, but normally the phase-in period will not be permitted to exceed five years.

C. Failure of a County to abide by the terms of a “phase-in plan” may result in the disapproval of all claims for reimbursement of defense services in noncapital cases submitted by the county. A county that is found to not be in compliance with the terms of its “phase-in plan” shall be required to comply with its original time frame, as set forth in its original “phase-in plan”, or such amended “phase-in plan” as the Commission may approve, in order to regain eligibility for reimbursement.

15. The Commission then discussed and confirmed its policy that reimbursement of appellate transcripts in death penalty cases be limited to counties that have an approved appellate provision in their comprehensive plan.
16. Finally, the Commission tabled the issue of using prior experience as a prosecutor to qualify an attorney under Criminal Rule 24.

Norman Lefstein, Chairman

Date